

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6234 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BHARATBHAI MANEKLAL PATEL

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 6234 of 2001
MR ASIM J PANDYA for Petitioner No. 1
MR DP JOSHI, ASSTT.GOVERNMENT PLEADER for Respondents No. 1-3
RULE SERVED for Respondent No. 3
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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 07/01/2002

ORAL JUDGEMENT

The petitioner has been detained by virtue of an
order passed by the District Magistrate, Ahmedabad on

July 6, 2001 in exercise of powers under Section 3 of the PASA Act. The petitioner seeks to challenge the said order by this petition under Article 226 of the Constitution of India.

2. The grounds of detention indicate that the detaining authority took into consideration two offences registered against the detenu under Bombay Prohibition Act. The detaining authority observed that the detenu is in the habit of trading in Indian made foreign liquor, which is detrimental to public health and public order. It is observed that the activities of the detenu adversely affect the society. Young children and innocent citizens got addicted to liquor, which results into economic deterioration and ultimately such people are led to commit crimes. They got engaged into criminal activities like robbery etc. and thereby affect public order.

The detaining authority also considered that resorting to less drastic remedy is not possible as the petitioner is required to be immediately detained in order that he may be immediately prevented from pursuing his illegal activity.

3. Learned Advocate appearing for the petitioner raised two contentions. First is that the detaining authority has founded the opinion on extraneous considerations without any material. There is no material for founding a satisfaction that young children get addicted to liquor because of the activity of the petitioner and are led to engage in criminal activities like robbery which are detrimental to public order. The second contention is that the action is delayed. The last offence was registered on 8.5.2001, whereas the order is passed on 6.7.2001. It is contended that the delay is not explained and therefore the petition may be allowed.

4. Learned AGP Mr. DP Joshi has opposed this petition vehemently. He submitted that there is no delay because the proposal for detention was made on 27th June, 2001. The period between 8.5.2001 to 27.6.2001 was consumed in studying and preparing the papers. So far as the other contentions are concerned, Mr. Joshi submitted that it is a fact that people get addicted to liquor, which results into deterioration of their financial condition and ultimately they indulge into criminal activities. Mr. Joshi therefore urged that the petition may be dismissed.

5. Having regard to the rival side contentions, it has to be observed that even Mr. Pandya does not agitate the observations regarding liquor being detrimental to public health, but his contention is that there is total absence of any material for recording a satisfaction that because of the activity of the petitioner, young children and innocent citizens get addicted to liquor and indulging in criminal activities like robbery, which adversely affects the public order. Mr. Joshi also could not indicate any material for making this observation. There is total absence of material for making such observations. The order of detention is therefore founded on an inference without any basis. The inference therefore would become irrelevant and the subjective satisfaction of the detaining authority that detention is the only remedy would get vitiated. The order of detention therefore cannot be permitted to stand. Petition therefore deserves to be allowed on this count alone.

6. Learned Advocate for the petitioner does not press for finding on the ground of delay.

7. The petition is allowed. Order of detention dated July 6, 2001 passed by the District Magistrate, Ahmedabad against the detenu is quashed and set aside. Detenu Bharatbhai Maneklal Patel be released from detention forthwith, if he is not required in any other case. Rule made absolute with no order as to costs. Direct service permitted.

(A.L.Dave, J.)